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No. 82-335

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PEOPLE FOR FREE SPEECH AT SAC and
ANNE ELSE,

Petitioners,

—v.—

UNITED STATES AIR FORCE, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY MEMORANDUM IN SUPPORT OF THE PETITION FOR CERTIORARI

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November 16, 1982

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PEOPLE FOR FREE SPEECH AT SAC and
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This case poses a fundamental issue of fairness concerning the military's ability to stage public relations events designed to enhance support for existing military programs and policies. The "open house" at issue herein was designed to be, and presumably is an effective mechanism for the advancement of views supportive of the expenditure of substantial resources in the area of national defense. The presence of representatives

from defense contractors at the "open house" is explicable in no other terms.[1/] Whatever the propriety of such public relations activity in the abstract , the military may not use its facilities to convey to the general public only one side of an issue of critical national importance. Schact v. United States, 398 U.S. 58 (1970); Jenness v. Forbes, 351 F. Supp. 88, 98-101 (D.R.I. 1972). In the absence of a compelling justification related to military security, the military may not bar civilian dissenters

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1/ The extra-record observation of the Solicitor General that no defense contractors appeared at the 1982 "open house" (Br. 10) is factually inaccurate, since the open house included displays from at least General Electric. In any event, the observation is meaningless, since the Solicitor General is careful to refrain from any commitment concerning the participation of defense contractors or other non-military personnel at future events.

from public relations events open to the public which are patently designed to present current national defense policy in a favorable light.[2/]

The Solicitor General's attempt to analogize the open house to a press conference (Br. at 8) is instructive. If the government staged a press conference open to the public, but excluded reporters who disagreed with government policy, the most serious First Amendment issues would be raised. See, e.g., Schact v. United States and Jenness v. Forbes, supra. In many ways,

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2/ Of course, reasonable restrictions may be placed on the time, place and manner of the dissenters' activities. See, e.g., Heffron v. ISKCON, 452 U.S. 640 (1981). Here, plaintiffs had agreed to comply with any such restrictions, and even to submit their written materials (which are in the record below) to the base commander for his prior inspection. See Petition for Certiorari at 7.

the "open house" here is analogous to such a press conference. Just as the government could not exclude certain reporters from a public news conference merely because they might ask embarrassing questions, the military may not exclude members of peace groups from public relations events otherwise open to the general public solely because the peace groups might ask embarrassing questions.[3/]

3/ If anything, the Solicitor General's press conference analogy cuts strongly in favor of petitioners' position. Even if the government staged a "closed" press conference for sympathetic reporters only, dissenters would be equally free to hold an answering press conference. The "open house" at issue herein is, however, a unique event pursuant to which the military exploits its monopoly over military facilities to stage an event designed to advance its views to the general public, which ultimately determines (via elections and other contact with elected representatives) the nation's military policies. Unlike a press conference, peace groups may not stage a comparable event to advance their views.

The government's suggestion that the 1981 open house, at which there were displays of military weaponry and equipment and booths operated by defense contractors, was not a one-sided attempt to convey an ideological message to the public is either naive or disingenuous. The "institutional advertising" represented by the open house for up to 250,000 citizens yearly (675 F.2d at 1012) is of course designed to enhance the image of and support for the military, just as corporate institutional advertising or sponsorship of sports events is designed to garner support for those corporations. See 675 F.2d at 1024 & n.4 (dissenting opinion). And the Court of Appeals' reliance on the fact that the message conveyed only "the 'current state' of the Air Force", not its future state, is hardly relevant, since one-sided factual presentations

unfairly skew public views on matters of vital public concern as much as do one-sided exhortations.[4/]

Under the First Amendment, the military could not stage a Red Square-type military parade down symbolically important Pennsylvania Avenue without at some time permitting anti-military groups to do the same. Having opened up a military base to 129,000 persons for a propaganda show having precisely that purpose, defendants may not, consistent with the content neutrality principle at the core of the First Amendment, deny anti-military groups an opportunity to communicate their contrary message as well.

4/ Hague v. CIO, 307 U.S. 496 (1939) would hardly have been decided differently if Mayor Hague had limited Jersey City's public halls and streets to speech by city officials and contractors doing business with the city concerning the "current state" of city government.

Respectfully submitted,

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